AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 376 OF 2003

Petitioner : Lakhan Lal Nayak, aged about 42 years, Son of Late Shri Raghunandan Nayak, village and Post Deosundra, Via-Palari, District Raipur (C.G.).

Versus

Respondents :1. Ministry of Home Affairs Through Secretary State of Chhattisgarh, D.K.S. Bhawan, Raipur

2. Ministry of Home Affairs Through- Secretary State of Madhya Pradesh, Bhopal.

3. Deputy Secretary, State of M.P. Home (Police) Department, Bhopal.

4. D.G.P. (Rail) Madhya Pradesh Bhopal.

5. Superintendent of Police (Rail) Raipur (C.G.).

Present: Shri R.K. Jaiswal, counsel for the petitioner.
Shri Alok Bakshi, Govt. Advocate for the respondents /State.

ORAL ORDER

(7th February, 2006)

1. This petition is filed by the petitioner, who was Constable in General Railways Police. On 5.10.1993, the petitioner was found in drunken condition and misbehaved one Prakesh Maheshwari and his friends. Prakash Maheshwari and his friends lodged an F.I.R. (Annexure P-1) in the General Railway Police, Raipur on the same day alleging that the petitioner

demanded money and wine impersonating himself as C.I.D. Officer. The petitioner further assaulted one Bhagwan Yadav.

2. Pursuant to the said F.I.R. dated 5.10.1993, the Superintendent of Police, Railways, Raipur suspended the petitioner from his service on the ground that the petitioner had misbehaved with the public in drunken condition and abused and assaulted some of the persons at railway station, Raipur.

3. The charge-sheet was issued on 6.11.1993 (Annexure P-3), on the charges that the petitioner was found in drunken condition in the night on 5.10.1993 at Raipur, Railway station platform. The petitioner abused and assaulted public in breach of the norms of discipline of the police force and the petitioner had impersonated himself as C.I.D. officer and according misled the public, at large.

4. The petitioner submitted his reply to the charge-sheet dated 10.12.1993 (Annexure P-4), vide letter dated 26.12.1993 (Annexure P-5). The petitioner sent a letter to the enquiry officer that since the case has been committed to the trial, the enquiry be stayed, but the enquiry continued. The enquiry officer after having examined all the witnesses produced by both the sides, submitted his report dated 8.2.1994, holding all the charges, alleged against the petitioner, proved against the petitioner. Agreeing with the enquiry report, the Superintendent of Police, Railways at Raipur imposed the punishment of dismissal from service vide letter dated 22.2.1994 (Annexure P-7) w.e.f. 22.2.1994.

124

6. Being aggrieved, the petitioner has filed the statutory appeal before the Deputy Inspector General of Police, Railways Bhopal. The Deputy Inspector General of Police, Railways Bhopal by his order dated 3.10.1994, agreeing with the findings of the enquiry officer and the punishment awarded by the disciplinary authority, dismissed the appeal.

7. It is well settled principle of law that if the enquiry report has been approved by the disciplinary authority as well as the appellate authority, this Court should not sit as an appellate court and should not interfere with the findings of facts, unless there is perversity in application of proper law and the enquiry report is not on the basis of the evidence.

8. Learned counsel for the petitioner submits that the petitioner has been acquitted in the criminal trial vide order dated 20.10.1995 (Annexure P-33) for the same charges, on the same evidence.

9. Learned counsel for the petitioner relies on a decision of the Supreme Court in **Captain M. Paul Anthory v. Bharat Gold Mines Ltd. and another**[1], wherein the Supreme Court held that if the prosecution case has been thrown out and the appellant has been acquitted, it would be unjust and unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings.

10. Shri Alok Bakshi, learned Government Advocate appearing for the respondents submits that this petition has been filed after

---

[1]AIR 1999 Supreme Court 1416

an inordinate delay of eight years. The appellate authority passed the order on 20.10.1995 and this petition has been filed on 22.1.2003. Learned counsel for the respondents further submits that the petitioner has not been honorably acquitted, but the petitioner was acquitted on the ground, that the prosecution has failed to prove, identity of the petitioner, who in drunken condition, had assaulted Shri Prakesh Maheshwari and other public. The witnesses could not identify the petitioner and as such the petitioner was acquitted on the ground that the prosecution has failed to prove this case beyond reasonable doubt.

11. I have heard learned counsel for the parties and perused the records appended to the pleadings. I am of the opinion that the decision of the Supreme Court in the case of Captain M. Paul Anthony (Supra) is not applicable to the fact of the present case. In the case of Captain M.Paul Anthony (Supra), the prosecution was thrown out completely on all counts. In the present case, the incident had been proved. It has also been proved that the petitioner was in drunken condition and misbehaved with the public and assaulted the public on the date of incident at railway platform, Raipur. The petitioner has been acquitted on the ground that the prosecution has failed to prove identity of the accused i.e. petitioner beyond reasonable doubt.

12. It is established principle of law that the criminal trial requires strict proof of evidence and the departmental enquiry does not require the same standard of evidence for

establishing the case. The enquiry officer has gone in detail and has examined all the witnesses produced by the presenting officer as well as the petitioner and the enquiry report has been approved by the disciplinary authority as well as the appellate authority.

13. The Supreme Court in **Depot Manager, A.P. State Road Transport Corporation V. Mohd. Yousuf Miya and others**[2] has held as under :-

> "8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

---

[2](1997) 2 Supreme Court Cases 699

Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338,

IPC. Under these circumstances, the High Court was not right in staying the proceedings."

14. The Supreme Court in **Govt. of T.N. and others V. S. Vel Raj**[3] has held as under :-

"7. The tribunal was also wrong in holding that what was alleged against the respondent did not amount to an act of misconduct. Under Rule 2 of the rules punishment can be imposed upon a member of the service "for good and sufficient reason". Therefore, the Tribunal ought to have examined the case from that angle. The respondent when he appeared before the PSI at 8 p.m. on 7-7-1984 was on duty. He had returned to the police station for reporting to the PSI as to what he had done regarding the directions given to him earlier. At that time he was found in a drunken condition and was in "mufti". He had even admitted before the PSI that he had consumed "arrack" and it was for that reason that he was smelling of alcohol. In this context, it was required to be considered whether there was "good and sufficient reason" for initiating a disciplinary proceeding against him and imposing the punishment of compulsory retirement. The police force has to be a disciplined force and a member of the public force has to behave in a disciplined manner particularly when he is on duty. The respondent even though he was sent for official work and was on duty returned to the police station in "mufti" and in a drunken condition after consuming "arrack". He had returned to the police station to report to his superior officer as to what happened to the work which was entrusted to him. Under these circumstances, his behavior has to be regarded as an act of gross misconduct. It is difficult to appreciate how the Tribunal could persuade itself to

---

[3](1997) 2 Supreme Court Cases 708

take a contrary view. In view of the facts and circumstances of this case it is not possible to say that the punishment which was imposed upon him was highly excessive. The appellate authority after considering his previous record and after giving him an opportunity to show cause against the proposed enhancement had passed the order of punishment. Though the Tribunal has held that the enquiry was not conducted by the appellate authority as required by the rules it has not been pointed out which requirement of the rule had not been complied with. The Tribunal was, therefore, wrong on this count also. In the result, this appeal is allowed and the order passed by the Tribunal is quashed and set aside. In view of the facts and circumstances of the case, however, there shall be no order as to costs".

15. For the reasons stated above, it is not necessary to go into the question of delay that the petitioner has filed this petition after a period of about 8 years.

16. For the reasons stated above, the writ petition stands dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu